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OFFICE OF THE
EXECUTIVE SECRETARY

February 25, 1999

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: *Complaint and Request for Relief of Tel-Save, Inc. Against BellSouth Telecommunications, Inc. for Violation of Sections 201(b) and 202 of the Communications Act of 1934, as amended, and Violation of T.C.A. § 65-4-115*
Docket No. 98-00464

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Motion to Dismiss. Copies are being provided to counsel of record.

Very truly yours,

Patrick W. Turner

PWT/jem

Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: Complaint and Request for Relief of Tel-Save, Inc. Against BellSouth Telecommunications, Inc. for Violation of Sections 201(b) and 202 of the Communications Act of 1934, as amended, and Violation of T.C.A. § 65-4-115

Docket No. 98-00464

BELLSOUTH TELECOMMUNICATIONS, INC.'S
MOTION TO DISMISS

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Motion to Dismiss the Complaint and Request for Relief filed by Tel-Save Inc. ("Tel-Save").

INTRODUCTION

In this docket, Tel-Save seeks an order "requiring that BellSouth accept e-mailed requests to lift PIC freezes, both directly from end-user customers and as forwarded by [Tel-Save]" *Complaint and Request for Relief* at p.6. After the parties filed pleadings, briefs, and testimony in this docket, both the Tennessee Regulatory Authority ("TRA") and the Federal Communications Commission ("FCC") adopted new rules addressing PIC freezes. The relief sought by Tel-Save is contrary to both sets of Rules.

Although both the TRA's rules and the FCC's rules require BellSouth to accept specified methods of lifting PIC freezes, neither the TRA's rules nor the FCC's Rules require BellSouth to accept e-mailed requests for lifting PIC freezes. In

fact, in its December 23, 1998 Order in CC Docket No. 94-129 ("the FCC Order"), the FCC noted that the Internet is "fertile ground for slamming" and expressed significant concerns "about whether [e-mailed requests to lift PIC freezes] would identify the submitting party as the actual subscriber whose service would be affected by the imposition or lifting of the preferred carrier freeze." FCC Order at ¶¶169, 175. The TRA, therefore, should dismiss Tel-Save's Complaint and Request for Relief because it seeks relief which is contrary to both the TRA's Rules and the FCC's Rules.

PROCEDURAL HISTORY

On or about June 19, 1998, Tel-Save filed its Complaint and Request for Relief in this Docket. On November 5, 1998, the Hearing Officer entered an Order which, in part, found that Tel-Save's filings had not addressed "a threshold issue" and ordered Tel-Save to "brief the minimum compliance standards consistent with [the then-existing] Authority Rules concerning the release of PIC freezes, the confirmation of the release of the PIC freeze and BellSouth's current operations" *Interim Order of Hearing Officer at 5*. Tel-Save filed its brief on October 30, 1998 and BellSouth filed its reply brief on November 4, 1998. After conducting discovery, the parties filed direct testimony on December 4, 1998 and rebuttal testimony on December 14, 1998. The next day – December 15, 1998 – the TRA adopted new rules that expressly address implementing and lifting PIC freezes.

ARGUMENT

During its December 15, 1998 Director's Conference, the TRA approved new Rule 1220-4-2-.56, which substantially amends the "slamming" rule that had been in effect when the parties filed the pleadings, briefs, and testimony in this docket. Although Tel-Save had expressly urged the TRA to include within this new Rule a provision permitting "the use of e-mail for lifting PIC freezes," *see* Transcript of November 17, 1998 hearing in Docket Nos. 97-07620 and 97-07621 at 34, the TRA declined to include any such provision in the new Rule. Instead, the new Rule provides that a PIC freeze shall be lifted by way of: a written and signed Letter of Agency ("LOA"); a call to the end-user's ILEC or CLEC; or a three-way call with the ILEC or CLEC and the long distance carrier. *See* Rule 1220-4-2-.56(13)(a) (emphasis added). Under the new Rule, therefore, ILECs and CLECs may not accept e-mailed requests to lift PIC freezes. Because Tel-Save seeks relief that is not permitted under the new Rule, the TRA should dismiss Tel-Save's Complaint and Request for Relief.

Moreover, to the extent that Tel-Save's request for relief relates to interLATA preferred carrier freezes, it is governed by the new rules the FCC adopted after the parties had filed the pleadings, briefs, and testimony in this docket. In its December 23, 1998, the FCC expressly stated that "it is reasonable for carriers to offer, at their discretion, preferred carrier freeze mechanisms that will enable subscribers to gain greater control over their carrier selection." Order at ¶114. The FCC required LECs that offer such freezes to accept two methods of lifting the

freezes. First, "a LEC administering a preferred carrier freeze program must accept the subscriber's written and signed authorization stating an intent to lift a preferred carrier freeze." Order at ¶128. Second, "LECs offering preferred carrier freeze programs must accept oral authorization from the customer to remove a freeze and must permit submitting carriers to conduct a three-way conference call with the LEC and the subscriber in order to lift a freeze." Order at ¶129.

Significantly, the FCC did not require LECs to accept e-mailed requests to lift PIC freezes. In fact, the FCC's Order expresses significant concerns over the use of the Internet to implement any aspect of carrier changes, including the placing and lifting of freezes. After noting that "[i]t is the very ease with which a subscriber may change carriers using the Internet that also makes the Internet fertile ground for slamming," Order at ¶169 (emphasis added), the FCC states:

We have particular concerns about how an Internet sign-up system satisfies the signature requirement, which is one of the most important identification requirements of the written LOA.

* * *

We tentatively conclude that electronic signatures used in Internet submissions of carrier changes would not comply with the signature requirement for LOAs. We believe that the electronic signature fails to identify the "signer" as the actual individual whose name has been "signed" to the Internet form. We also believe that the electronic signature fails to identify the "signer" as an individual who is actually authorized to make telecommunications decisions.

Order at ¶171 (emphasis added). In its Further Notice of Proposed Rulemaking, the FCC clearly states that these concerns apply in the context of lifting PIC freezes by e-mail:

[W]e seek comments on the extent to which subscribers may use the Internet to request or lift preferred carrier freezes. We have the same general above-mentioned concerns about whether this method would identify the submitting party as the actual subscriber whose service would be affected by the imposition or lifting of the preferred carrier freeze.

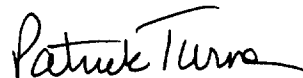
Order at ¶175. Thus to the extent that the relief sought by Tel-Save relates to interLATA preferred carrier freezes, the TRA should deny the request because it is inconsistent with current FCC rules.

CONCLUSION

In summary, the relief that Tel-Save requested is inconsistent with Rules recently adopted by both the TRA and the FCC. The TRA, therefore, should dismiss Tel-Save's Complaint and Request for Relief with prejudice

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 1999, a copy of the foregoing document was served on the parties of record, via U. S. Mail, postage pre-paid, addressed as follows:

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